

# TESTIMONY ON ANTI-GANG LEGISLATION SENATE BILLS (SB) 291-292 and SB 660-661

February 12, 2008

### What is FAMM?

Senator Kuipers, and members of the Senate Judiciary Committee, my name is Jean Doss and I am here today on behalf of Families Against Mandatory Minimums or "FAMM." FAMM is a nationwide nonpartisan organization founded by attorneys, judges, criminal justice experts and the families of prisoners. FAMM's goals are to end inflexible sentencing policies so that judges have the authority to fit the punishment to the crime and the individual.

### Our position

As introduced, FAMM strongly opposed these bills as costly, flawed approaches to public policy. Thanks to the efforts of Chairman Kuipers and Sen. Jansen, FAMM is now neutral on SB 660 and anticipates that its concerns with the companion sentencing guidelines bill, SB 661, will soon be resolved as well.

FAMM appreciates the efforts of the Chair and Sen. Kahn, but continues to oppose SB 291 and 292. As with other the other anti-gang bills, we remain hopeful that ongoing discussions will resolve our concerns and allow us to adopt a neutral position on these bills.

## Members of this committee helped make Michigan the national leader in smart, cost-effective sentencing policies.

In 1998 and 2002 the Michigan legislature (including members of this committee), by overwhelming majorities, passed sweeping reforms which repealed most of the state's mandatory minimum drug sentences and mandatory consecutive sentencing for drug offenders, replacing them with sentencing guidelines.

Legislators and then-Governor Engler, as well as prosecutors, judges, and law enforcement officers, agreed with FAMM that mandatory minimum drug laws and consecutive sentencing did not work as they were intended. While intended for drug "kingpins," these sentencing laws ended up locking up mostly low-level couriers and addicts.

### FAMM was concerned that the original versions of the gang bills represented a stepback from Michigan's 'smart on crime' efforts

Shortly after the introduction of SB 291-292 and SB 660-661, FAMM approached bill sponsors Senators Kahn and Jansen, as well as Chairman Kuipers with concerns that, as originally drafted, the bills would turn back the clock on Michigan's reputation as a national leader in "smart on crime" sentencing reforms. While attempting to address gang violence, the original bills will be less effective than other evidence-based approaches to gang involvement and will cast far too wide a net — driving up incarceration rates for minority youth with too little long-term relief for communities affected by gang activity.

#### In brief:

- Michigan already increases penalties for gang and repeat offenses and current sentencing guidelines punish serious and violent crimes, whether committed by gang members or not.
- The bills will have a major fiscal and huge bed space impact Michigan is already facing a crisis in mounting corrections costs that squeeze out funding for the very programs that most effectively address gang activity and youth violence.
- We need to take time to evaluate the scope of the problem —Gang activity is not uniformly on the rise around the country or in Michigan communities. National experts on gang activity strongly recommend a thorough community based analysis of the extent and nature of the gang problem, before crafting a comprehensive, cost-effective approach that includes prevention, comprehensive services for at-risk youth, and law enforcement strategies aimed at targeting the relatively limited number of violent gang leaders and members.
- **Don't implement failed policies** States that depended largely on a punitive approach, like Illinois and California, saw gangs proliferate. Harsh sentencing policies fueled the growth and centralization of prison-based gangs in those states.
- The bills as introduced, will cast far too wide a net —The bills as introduced create an overly broad definition of gangs and gang-related crime and will fill prisons with low-level offenders who can be adequately punished under current laws.
- The Senate gang bills, as introduced, dramatically lower the standard of proof for identifying both gangs and gang members. Individuals, including children and youth, may be identified as gang members if they mimic or adopt gang signs and symbols for status reasons, join gangs for self-protection, are involved in minor drug offenses, or engage in serious delinquent behavior. Under these bills, youth from the same neighborhood who wear similar "hip hop" clothing and engage in even minor offenses could be identified as gang members.

# Thank you to Senators Jansen, Kahn and Kuipers for your willingness to listen to FAMM's concerns and work out compromise language

Bill sponsors Senators Jansen and Kahn, and Chairman Kuipers have worked closely with FAMM and other members of the Michigan Gang Working Group to understand and address our concerns. While we continue to have serious concerns about a number of the bills in this package, there has been much progress.

### SB 660 - 661

The most recent draft of Sen. Jansen's bill, SB 660, is much improved. It continues to establish a new felony for gang members who cause, encourage, recruit, solicit, or coerce another to join a gang, as well as for a gang member who directly or indirectly threatens another with the intent of preventing someone from leaving a gang, or to punish a person who has left a gang. The definitions of "a gang" and a "gang member" are far less broad, and it appears that in the most current draft the term "gang-related activity" is dropped altogether. The sponsor has also agreed to delete troublesome language eliminating the constitutional standard of proof beyond a reasonable doubt.

In FAMM's opinion, Sen. Jansen's sentencing guideline bill, SB 661 continues to raise concerns. Sen. Jansen is aware of this and willing to keep working on his bill, including floor amendments if necessary.

### SB 292-292

This bill creates a new felony for gang membership providing the motive, means or opportunity to commit a felony or attempt to commit a felony. Early in our initial conversations, Sen. Kahn dropped the mandatory minimum sentences from his bill. As of yesterday, we had not seen the most current draft substitute, but we understand that Sen. Kahn is willing to adopt less vague definitions and include those that more closely link to conduct instead of simple association to a group perceived to be a gang. We had hoped the sponsor would also change the mandatory consecutive sentencing to discretionary, and, like Sen. Jansen, also restore a constitutional standard of proof beyond a reasonable doubt. We will continue to work with Senator Kahn on these points.

As with SB 661, the sentencing guideline companion bill to SB 291 – FAMM believes SB 292 needs continued discussion and analysis.

### In closing

Thank you to both sponsors and to Chairman Kuipers for your engagement and willingness to hear our concerns and negotiate changes. I am happy to try and answer any questions you may have at this time. You may also contact me in the future at (517) 999-3165 or <a href="mailto:jmdoss@comcast.net">jmdoss@comcast.net</a>, or contact FAMM's lobbyist, Noah Smith, Capitol Services, Inc. at (517) 372-0860 or nsmith@capitolservices.org.

### **New York Times**

### **Arrested While Grieving**

May 26, 2007 Op-Ed Columnist By BOB HERBERT

No one is paying much attention, but parts of New York City are like a police state for young men, women and children who happen to be black or Hispanic. They are routinely stopped, searched, harassed, intimidated, humiliated and, in many cases, arrested for no good reason.

Most black elected officials have joined their white colleagues and the media in turning a blind eye to this continuing outrage. And many black cops have joined their white colleagues in the systematic mistreatment.

Last Monday in the Bushwick section of Brooklyn, about three dozen grieving young people on their way to a wake for a teenage friend who had been murdered were surrounded by the police, cursed at, handcuffed and ordered into paddy wagons. They were taken to the 83rd precinct stationhouse, where several were thrown into jail.

Leana Matia, an 18-year-old student at John Jay College, was one of those taken into custody. "We were walking toward the train station to take the L train when all these cops just swooped in on us," she said. "They cursed us out and pushed the guys. And then they handcuffed us. We kept asking, 'What are you doing?' "

Children as young as 13 were among those swept up by the cops. Two of them, including 16-year-old Lamel Carter, were the children of police officers. Some of the youngsters were carrying notes from school saying that they were allowed to be absent to attend the wake. There is no evidence that I've been able to find — other than uncorroborated statements by the police — that the teenagers were misbehaving in any way.

Everyone was searched, but nothing unlawful was found — no weapons, no marijuana or other drugs. Some of the kids were told at the scene that they were being seized because they had assembled unlawfully. "I didn't know what unlawful assembly was," said Kumar Singh, 18, who was among those arrested.

According to the police, the youngsters at the scene were on a rampage, yelling and blocking traffic. That does not seem to be the truth.

I spoke individually to several of the youngsters, to the principal of Bushwick Community High School (where a number of the kids are students), to a parent who was at the scene, and others. Nowhere was there even a hint of the chaos described by the police. Every account that I was able to find described a large group of youngsters, very sad and downcast about the loss of their friend, walking peacefully toward the station.

Kathleen Williams, whose son and two nieces were rounded up, was at the scene. She said there was no disturbance at all, and that when she tried to ask the police why the kids were being picked up, she was told to be quiet or she would be arrested, too.

Capt. Scott Henderson of the 83rd Precinct told me that the police had developed a "plan" to deal with youngsters going to the wake because they suspected that the murder was gang-related and there had already been some retaliation. He said he had personally witnessed the youngsters in Bushwick behaving badly and gave the order to arrest them.

Many of the kids were wearing white T-shirts with a picture of the dead teenager and the letters "R.I.P." on them. The cops cited the T-shirts as evidence of gang membership.

Thirty-two of the youngsters were arrested. Most were charged with unlawful assembly and disorderly conduct. Several were held in jail overnight.

Police Commissioner Ray Kelly did not exactly give the arrests a ringing endorsement. He said, in a prepared statement, "A police captain who witnessed the activity made a good-faith judgment in ordering the arrests."

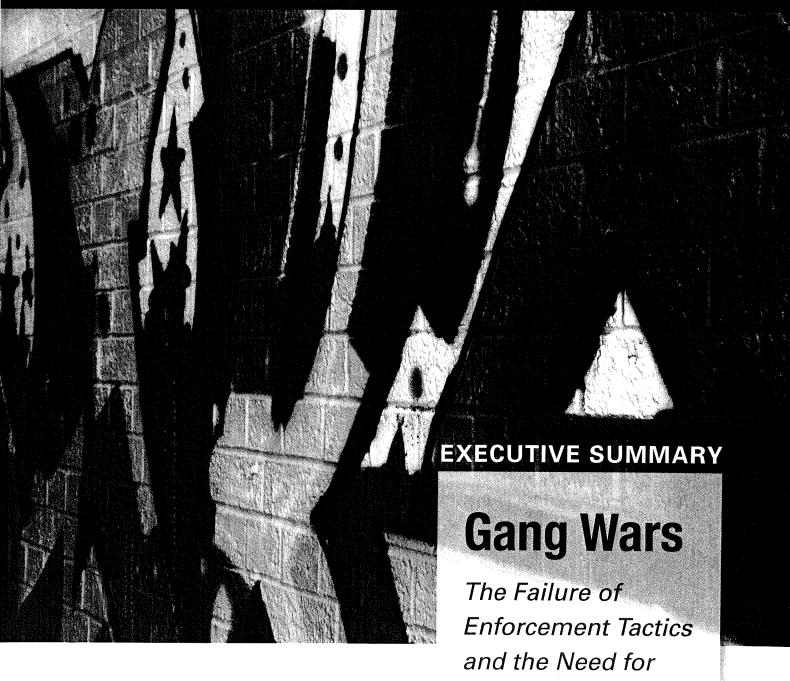
A spokesman for the Brooklyn district attorney, Charles Hynes, said, "It wouldn't be unusual for a lot of this stuff to get dismissed."

The principal of Bushwick Community High, Tira Randall, said, "My kids come in here on a daily basis with stories about harassment by the police. They're not making these stories up."

New York City cops stopped and, in many cases, searched individuals more than a half million times last year. Those stops are not happening on Park Avenue or Fifth Avenue in Manhattan. Thousands upon thousands of them amount to simple harassment of young black and Hispanic males and females who have done absolutely nothing wrong, but feel helpless to object.

It is long past time for this harassment of ethnic minorities by the police to cease. Why it has been tolerated this long, I have no idea.

# Justice Policy



A Justice Policy Institute Report July 2007

By Judith Greene and Kevin Pranis

Effective Public Safety Strategies The Justice Policy Institute is a public policy institute dedicated to ending society's reliance on incarceration and promoting effective solutions to social problems.

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outh crime in the United States remains near the lowest levels seen in the past three decades, yet public concern and media coverage of gang activity has skyrocketed since 2000. Fear has spread from neighborhoods with long-standing gang problems to communities with historically low levels of crime, and some policy makers have declared the arrival of a national gang "crisis." Yet many questions remain unanswered. How can communities and policy makers differentiate between perceived threats and actual challenges presented by gangs? Which communities are most affected by gangs, and what is the nature of that impact? How much of the crime that plagues poor urban neighborhoods is attributable to gangs? And what approaches work to promote public safety?

This report attempts to clarify some of the persistent misconceptions about gangs and to assess the successes and failures of approaches that have been employed to respond to gangs. We undertook an extensive review of the research literature on gangs because we believe that the costs of uninformed policy making—including thousands of lives lost to violence or imprisonment—are simply too high.

Los Angeles is a case in point. Author and former California state senator Tom Hayden reports that thousands of young people have been killed in Los Angeles gang conflicts despite decades of extremely aggressive gang enforcement. City and state officials have spent billions of dollars on policing and surveillance, on development of databases containing the names of tens of thousands of alleged gang members, and on long prison sentences for gang members. Spending on gang enforcement has far outpaced spending on prevention programs or on improved conditions in communities where gang violence takes a heavy toll.

Los Angeles taxpayers have not seen a return on their

massive investments over the past quarter century: law enforcement agencies report that there are now six times as many gangs and at least double the number of gang members in the region. In the undisputed gang capital of the U.S., more police, more prisons, and more punitive measures haven't stopped the cycle of gang violence. Los Angeles is losing the war on gangs.

Absent better information, lawmakers in the nation's capital and across the country risk blindly following in Los Angeles' troubled footsteps. Washington policy makers have tied gangs to terrorism and connected their formation and growth to everything from lax border enforcement to the illicit drug trade. Federal proposals—such as S. 456, the "Gang Abatement and Prevention Act of 2007"—promise more of the kinds of punitive approaches that have failed to curb the violence in Los Angeles.

Gang Wars presents findings from an extensive review of the research literature on gangs and the effectiveness of various policy responses to gang problems.

The following conclusions may surprise those who follow the public discussion on gangs.

## Gangs, gang members, and gang activity

There are fewer gang members in the United States today than there were a decade ago, and there is no evidence that gang activity is growing. It is difficult to find a law enforcement account of gang activity that does not give the impression that the problem is getting worse by the day. Yet the most recent comprehensive law enforcement estimate indicates that youth gang membership fell from 850,000 in 1996 to 760,000 in 2004 and that the proportion of jurisdictions reporting gang problems has dropped substantially. The myth of a growing gang menace has been fueled by sensational media coverage and misuse of law enforcement gang statistics, which gang experts consider unreliable for the purpose of tracking local crime trends.

There is no consistent relationship between law enforcement measures of gang activity and crime trends. One expert observes that gang membership estimates were near an all-time high at the end of the 1990s, when youth violence fell to the lowest level in decades. An analysis of gang membership and crime data from North Carolina found that most jurisdictions reporting growth in gang membership also reported falling crime rates. Dallas neighborhoods targeted for gang suppression activities reported both a drop in gang crime and an increase in violent crime during the intervention period.

Gang members account for a relatively small share of crime in most jurisdictions. There are a handful of jurisdictions such as Los Angeles and Chicago where gang members are believed to be responsible for a significant share of crime. But the available evidence indicates that gang members play a relatively small role in the national crime problem despite their propensity toward criminal activity. National estimates and local research findings suggest that gang members may be responsible for fewer than one in 10 homicides; fewer than one in 16 violent offenses; and fewer than one in 20 serious (index¹) crimes. Gangs themselves play an even smaller role, since much of the crime committed by gang members is self-directed and not committed for the gang's benefit.

### Gangs do not dominate or drive the drug trade.

National drug enforcement sources claim that gangs are "the primary retail distributors of drugs in the country." But studies of several jurisdictions where gangs are active have concluded that gang members account for a relatively small share of drug sales and that gangs do not generally seek to control drug markets. Investigations conducted in Los Angeles and nearby cities found that gang members accounted for one in four drug sale arrests. The Los Angeles district attorney concluded that just one in seven gang members sold drugs on a monthly basis. St. Louis researchers describe gang involvement in drug sales as "poorly organized, episodic, nonmonopolistic [and] not a rationale for the gang's existence." A member of one of San Diego's best-organized gangs explains: "The gang don't organize nothing. It's like everybody is on they own. You are not trying to do nothing with nobody unless it's with your friend. You don't put your money with gangs."

The public face of the gang problem is black and brown, but whites make up the largest group of adolescent gang members. Law enforcement sources report that over 90 percent of gang members are nonwhite, but youth survey data show that whites account for 40 percent of adolescent gang members. White gang youth closely resemble black and Latino counterparts on measures of delinquency and gang involvement, yet they are virtually absent from most law enforcement and media accounts of the gang problem. The disparity raises troubling questions about how gang members are identified by police.

Most gang members join when they are young and quickly outgrow their gang affiliation without the help of law enforcement or gang intervention programs. A substantial minority of youth (7 percent of whites and 12 percent of blacks and Latinos) goes through a gang phase during adolescence, but most youth quit the gang within the first year. One multistate survey found that fully half of eighth-graders reporting gang involvement were former members. When former gang members cite reasons why they left the gang, they commonly mention high levels of violence and say that they just grew out of gang activity; only rarely do they cite fear of arrest or criminal penalties.

Most youth who join gangs do so between the ages of 12 and 15, but the involvement of younger children in gangs is not new. Noted expert Malcolm Klein observes: "Although some writers and officials decry the 8- and 10-year-old gang member, they

<sup>1</sup> One of the eight crimes listed on Part 1 of the Uniform Crime Reports: rape, robbery, murder, aggravated assault, burglary, larceny, theft of a motor vehicle, and arson.

haven't been in the business long enough to realize that we heard the same reports 20 and 40 years ago."

Leaving the gang early reduces the risk of negative life outcomes, but current policies make it more difficult for gang members to quit. Gang involvement is associated with dropping out of school, teen parenthood, and unstable employment, but the risks are much smaller for those who leave the gang in a year or less. Yet little attention has been devoted to why and how youth leave gangs, and many gang control policies make the process of leaving more rather than less difficult by continuing to target former members after their gang affiliation has ended. Researchers note: "Police and school officials may not be aware of the decision of individuals to leave the gang or may not take such claims seriously, and records may not be purged of prior gang status.... When representatives of official agencies (e.g., police, school) identify an individual as a gang member, they are sending a powerful signal to rival gang members as well as to people in the community about the gang involvement of that person."

### **Gang enforcement**

The record of law enforcement antigang efforts provides little reason for optimism. Media reports are full of stories about cities where crime goes up, a crackdown is launched, and crime goes down. But a review of research on the implementation of gang enforcement strategies—ranging from neighborhood-based suppression to the U.S. Justice Department Office of Juvenile Justice and Delinquency Prevention's Comprehensive Gang Program Model—paints a very different picture. Findings from investigations of gang enforcement efforts in 17 jurisdictions over the past two decades yield few examples of success and many examples of failure.

The problems highlighted in the research include:

- Lack of correspondence between the problem, typically lethal and/or serious violence, and a law enforcement response that targets low-level, nonviolent misbehavior.
- Resistance on the part of key agency personnel to collaboration or implementation of the strategy as designed.
- Evidence that the intervention had no effect or a negative effect on crime and violence.
- A tendency for any reductions in crime or violence to evaporate quickly, often before the end of the

- intervention period.
- Poorly designed evaluations that make it impossible to draw any conclusions about the effect of an intervention.
- Failure of replication efforts to achieve results comparable to those of pilot programs.
- Severe imbalances of power and resources between law enforcement and community partners that hamper the implementation of "balanced" gang control initiatives.

The literature survey also yielded the following findings concerning typical gang enforcement initiatives:

Police gang units are often formed for the wrong reasons and perceived as isolated and ineffectual by law enforcement colleagues. A survey of 300 large cities found that the formation of gang units was more closely associated with the availability of funding and the size of the Latino population than with the extent of local gang or crime problems. An in-depth study of four cities determined that gang units were formed in response to "political, public, and media pressure" and that "almost no one other than the gang unit officers themselves seemed to believe that gang unit suppression efforts were effective at reducing the communities' gang problems." Investigators found that gang officers were poorly trained and that their units became isolated from host agencies and community residents. The chief of one police department admitted that he had "little understanding of what the gang unit did or how it operated." The authors observed that the isolation of gang units from host agencies and their tendency to form tight-knit subcultures—not entirely unlike those of gangs-may contribute to a disturbingly high incidence of corruption and other misconduct.

Heavy-handed suppression efforts can increase gang cohesion and police-community tensions, and they have a poor track record when it comes to reducing crime and violence. Suppression remains an enormously popular response to gang activity despite concerns by gang experts that such tactics can strengthen gang cohesion and increase tension between law enforcement and community members. Results from Department of Justice-funded interventions in three major cities yield no evidence that a flood of federal dollars and arrests had a positive impact on target neighborhoods. St. Louis evaluators found that dozens of targeted arrests and hundreds of police stops failed to yield meaningful reductions in crime in the targeted neighborhoods, even during the period of intense police activity. Dallas residents saw

the incidence of "gang-related" violence fall in target areas but had little to celebrate because the overall violent crime numbers rose during the intervention period. Detroit evaluators reported initial reductions in gun crimes within two targeted precincts, but the apparent gains were short-lived: by the end of the intervention period, the incidence of gun crime in target areas was at preintervention levels and trending upward.

"Balanced" gang control strategies have been plagued by replication problems and imbalances between law enforcement and community stakeholders. Gang program models that seek to balance suppression activities with the provision of social services and supports have been piloted in Boston and Chicago with some success. But the results of attempts to replicate Operation Ceasefire and the Comprehensive Gang Program Model in other jurisdictions have been disappointing. Replications of the Ceasefire model in Los Angeles and Indianapolis produced no evidence that efforts to disseminate a deterrence message had changed the behavior of gang members. Meanwhile, replications of the Chicago model in five cities produced mixed results, with just two sites reporting reductions in participants' violent behavior that approached statistical significance. Prevention and intervention appeared to lag far behind suppression efforts in the many sites. The Los Angeles Ceasefire evaluators concluded: "We suspect that the carrot side of these interventions will always lag far behind the stick side in spite of the best intentions that it not do so, unless some extraordinary efforts are made" (emphasis added). A recent analysis concluded that two-thirds of resources expended on gang reduction in Los Angeles have gone to suppression activities.

African American and Latino communities bear the cost of failed gang enforcement initiatives. Young men of color are disproportionately identified as gang members and targeted for surveillance, arrest, and incarceration, while whites-who make up a significant share of gang members—rarely show up in accounts of gang enforcement efforts. The Los Angeles district attorney's office found that close to half of black males between the ages of 21 and 24 had been entered in the county's gang database even though no one could credibly argue that all of these young men were current gang members. Communities of color suffer not only from the imposition of aggressive police tactics that can resemble martial law, but also from the failure of such tactics to pacify their neighborhoods. One researcher argues that in Chicago, for example, a cycle of police suppression and incarceration, and a legacy of segregation, have actually helped to *sustain* unacceptably high levels of gang violence.

### Positive public safety strategies

This report does not endorse any particular program or approach for reducing the damage done by gangs and gang members. Instead, it points toward effective actions we can take to reduce youth violence. The most effective route toward reducing the harm caused by gangs requires a more realistic grasp of the challenges that gangs pose. The objective should not be to eradicate gangs—an impossible task—but rather to promote community safety. As one community stakeholder observes, "The problem is not to get kids out of gangs, but the behavior. If crime goes down, if young people are doing well, that's successful."

One city that never embraced the heavy-handed suppression tactics chosen elsewhere has experienced far less gang violence. In New York City, a variety of street work and gang intervention programs were fielded decades ago during a period when gang violence was on the rise. These strategies were solidly grounded in principles of effective social work practices that fall outside the realm of law enforcement, and they seem to have helped dissuade city policy makers and police officials from embracing most of the counterproductive gang suppression tactics adopted elsewhere. No seasoned New Yorker would deny the existence of street gangs. But gangrelated offenses represent just a tiny blip on the New York crime screen. Gang experts conclude that the city's serious problem with street gang violence had largely faded away by the end of the 1980s. Youth violence remains a problem in some New York City neighborhoods, but with crime falling to historic lows, the city's approach to gangs and youth crime seems to be remarkably effective.

There is no "magic bullet" to end gang crime, but both the lessons from the past and results from research on more recent innovations in juvenile justice policy point toward more effective public safety strategies:

• Expand the use of evidenced-based practice to reduce youth crime. Evidenced-based practices are those interventions that are scientifically proven to reduce juvenile recidivism and promote positive outcomes for young people. Rather than devoting more resources to gang suppression and law enforcement

- tactics, researchers recommend targeting funding to support research-based programs operated by agencies in the health and human services sector. As Peter Greenwood, former director of the RAND Corporation's Criminal Justice Program and an evaluator of Operation Ceasefire in Los Angeles, notes, "Delays in adopting proven programs will only cause additional victimization of citizens and unnecessarily compromise the future of additional youth."
- Promote jobs, education, and healthy communities, and lower barriers to the reintegration into society of former gang members. Many gang researchers observe that employment and family formation help draw youth away from gangs. White youth have greater access to jobs and education, which may explain why there are many white gang members but little discussion of a chronic white gang
- problem. Creating positive opportunities through which gang members can leave their past behind is the best chance for improving public safety. This requires both investing resources and reforming policies and practices that now deny current and former gang members access to these opportunities.
- Redirect resources from failed gang enforcement efforts to proven public safety strategies. Gang injunctions, gang sweeps, and ominous-sounding enforcement initiatives reinforce negative images of whole communities and run counter to the positive youth development agenda that has been proven to work. Rather than promoting antigang rhetoric and programs, policy makers should expand evidence-based approaches to help former gang members and all youth acquire the skills and opportunities they need to contribute to healthy and vibrant communities.

### **ABOUT THE AUTHORS**

### **ACKNOWLEDGMENTS**

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